

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED
2011 NOV 10 P 3:03
RICHARD W. J. [unclear]
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

CR 11 0832

KIM WHATLEY,
LOBIS BURTON,
and
ELLA MAE SIMPSON

DEFENDANT(S).

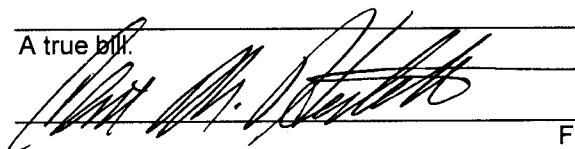
INDICTMENT

21 U.S.C. § 846- Conspiracy to Possess with Intent to Distribute and
to Distribute Oxycodone

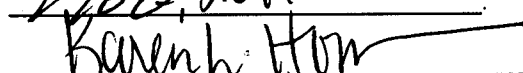
21 U.S.C. § 841(a)(1) & (b)(1)(C)- Possession with Intent to
Distribute and Distribution of Oxycodone and/or Oxymorphone

18 U.S.C. § 922(g)(1)- Felon in Possession of Firearm

A true bill.


Foreman

Filed in open court this 10 day of

Nov, 2011

Clerk

Kim Whatley - no process; Lobis Burton & Ella Mae Simpson - no bail warrant

Bail, \$


Timothy J. Bommer
United States Magistrate Judge



11R

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

21 U.S.C. Section 846

21 U.S.C. Sections 841(a)(1) & (b)(1)(C)

18 U.S.C. Section 922(g)(1)

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: 846, 841(a)(1) & (b)(1)(C): max. sentence of 20 years, 3 years supervised release, \$1,000,000 fine, and \$100 special assessment

922(g)(1): max. sentence of 10 years, 3 years supervised release, \$250,000 fine, and \$100 special assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DEFENDANT - U.S.

KIM WHATLEY

DISTRICT COURT NUMBER

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Special Agent Lisa Johnson (FBI)

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☒ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

3-11-70682 EDL

Name and Office of Person

Furnishing Information on this form Melinda Haag

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Katherine B. Dowling

IS NOT IN CUSTODY

Has not been arrested, pending outcome of proceeding.

1) ☐ If not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☒ On this charge

5) ☐ On another conviction

☐ Federal ☐ State

6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST Month/Day/Year
 June 17, 2011

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year
 June 20, 2011

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**

☐ SUMMONS ☐ NO PROCESS* ☐ WARRANT

Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

Date/Time: _____ Before Judge: _____

Comments: Defendant is already in custody on prior complaint

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED

21 U.S.C. Section 846

21 U.S.C. Sections 841(a)(1) & (b)(1)(C)

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: 846, 841(a)(1) & (b)(1)(C): max. sentence of 20 years, 3 years supervised release, \$1,000,000 fine, and \$100 special assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEFENDANT - U.S.

LOBIS BURTON

DISTRICT COURT NUMBER

IS NOT IN CUSTODY

Has not been arrested, pending this proceeding.

 1) ☐ If not detained give date any prior summons was served on above charged
2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction☐ Federal ☐ State6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Special Agent Lisa Johnson (FBI)

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:
☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form Melinda Haag

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned)

Katherine B. Dowling

☐ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT

Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

Date/Time: _____

Before Judge: _____

Comments:

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED
 21 U.S.C. Section 846
 21 U.S.C. Sections 841(a)(1) & (b)(1)(C)
 18 U.S.C. Section 922(g)(1)

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: 846, 841(a)(1) & (b)(1)(C): max. sentence of 20 years, 3 years supervised release, \$1,000,000 fine, and \$100 special assessment

922(g)(1): max. sentence of 10 years, 3 years supervised release, \$250,000 fine, and \$100 special assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEFENDANT - U.S.

ELLA MAE SIMPSON

DISTRICT COURT NUMBER

CR 11 0832

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Special Agent Lisa Johnson (FBI)

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

 Name and Office of Person
 Furnishing Information on this form Melinda Haag

☒ U.S. Attorney ☐ Other U.S. Agency

 Name of Assistant U.S.
 Attorney (if assigned) Katherine B. Dowling
IS NOT IN CUSTODY

Has not been arrested, pending, or proceeding.

 1) ☐ If not detained give date any prior summons was served on above charges

 2) ☐ Is a Fugitive

 3) ☐ Is on Bail or Release from (show District)
IS IN CUSTODY
 4) ☐ On this charge

 5) ☐ On another conviction

☐ Federal ☐ State

 6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer
 been filed? ☐ Yes ☐ No

 If "Yes"
 give date
 filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT

Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Date/Time: _____

Before Judge: _____

Comments:

MELINDA HAAG (CABN 132612)
United States Attorney



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SI

CR 11 0832

UNITED STATES OF AMERICA

No. CR

v.

KIM WHATLEY,
LOBIS BURTON, and
ELLA MAE SIMPSON,

Defendants.

VIOLATIONS: 21 U.S.C. § 846 –
Conspiracy to Possess with Intent to
Distribute and to Distribute Oxycodone;
21 U.S.C. §§ 841(a)(1) & (b)(1)(C) –
Possession with Intent to Distribute and
Distribution of Oxycodone and/or
Oxymorphone; 18 U.S.C. § 922(g)(1) –
Felon in Possession of Firearm; 21 U.S.C. §
853 – Criminal Forfeiture; and
18 U.S.C. § 924(d)(1) – Forfeiture of a
Firearm

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

COUNT ONE: (21 U.S.C. § 846 – Conspiracy to Possess with Intent to Distribute and to
Distribute Oxycodone)

Beginning at a time unknown to the Grand Jury, but no later than on or about June 6,
2011, and continuing thereafter up through and including June 9, 2011, both dates being
approximate and inclusive, in the Northern District of California and elsewhere, the defendants,

INDICTMENT

1 KIM WHATLEY,
2 LOBIS BURTON, and
3 ELLA MAE SIMPSON,

4 and others known and unknown, did knowingly and intentionally conspire to possess with intent
5 to distribute and to distribute a substance containing oxycodone, a Schedule II controlled
6 substance; in violation of Title 21, United States Code, Sections 846, 841(a)(1), and
7 841(b)(1)(C).

8 COUNT TWO: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
9 Distribution of Oxycodone)

10 On or about April 5, 2011, in the Northern District of California, the defendant,

11 LOBIS BURTON,

12 did knowingly and intentionally possess with intent to distribute and distribute a substance
13 containing oxycodone, a Schedule II controlled substance; in violation of Title 21, United States
14 Code, Sections 841(a)(1) and 841(b)(1)(C).

15 COUNT THREE: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
16 Distribution of Oxycodone)

17 On or about April 5, 2011, in the Northern District of California, the defendant,

18 ELLA MAE SIMPSON,

19 did knowingly and intentionally possess with intent to distribute and distribute a substance
20 containing oxycodone, a Schedule II controlled substance; in violation of Title 21, United States
21 Code, Sections 841(a)(1) and 841(b)(1)(C).

22 COUNT FOUR: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
23 Distribution of Oxymorphone)

24 On or about April 11, 2011, in the Northern District of California, the defendant,

25 KIM WHATLEY,

26 did knowingly and intentionally possess with intent to distribute and distribute a substance
27 containing oxymorphone, a Schedule II controlled substance; in violation of Title 21, United
28 States Code, Sections 841(a)(1) and 841(b)(1)(C).

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1 COUNT FIVE: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
2 Distribution of Oxycodone and Oxymorphone)

3 On or about May 5, 2011, in the Northern District of California, the defendant,

4 KIM WHATLEY,

5 did knowingly and intentionally possess with intent to distribute and distribute substances
6 containing oxycodone and oxymorphone, Schedule II controlled substances; in violation of Title
7 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

8 COUNT SIX: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
9 Distribution of Oxycodone)

10 On or about June 6, 2011, in the Northern District of California, the defendant,

11 ELLA MAE SIMPSON,

12 did knowingly and intentionally possess with intent to distribute and distribute a substance
13 containing oxycodone, a Schedule II controlled substance; in violation of Title 21, United States
14 Code, Sections 841(a)(1) and 841(b)(1)(C).

15 COUNT SEVEN: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
16 Distribution of Oxycodone)

17 On or about June 8, 2011, in the Northern District of California, the defendant,

18 ELLA MAE SIMPSON,

19 did knowingly and intentionally possess with intent to distribute and distribute a substance
20 containing oxycodone, a Schedule II controlled substance; in violation of Title 21, United States
21 Code, Sections 841(a)(1) and 841(b)(1)(C).

22 COUNT EIGHT: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and
23 Distribution of Oxycodone)

24 On or about June 8, 2011, in the Northern District of California, the defendant,

25 LOBIS BURTON,

26 did knowingly and intentionally possess with intent to distribute and distribute a substance
27 containing oxycodone, a Schedule II controlled substance; in violation of Title 21, United States
28 Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT NINE: (21 U.S.C. §§ 841(a)(1) & (b)(1)(C) – Possession with Intent to Distribute and Distribution of Oxycodone)

On or about June 9, 2011, in the Northern District of California, the defendant,
 KIM WHATLEY,
 did knowingly and intentionally possess with intent to distribute and distribute a substance containing oxycodone, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT TEN: (18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm)

On or about June 9, 2011, in the Northern District of California, the defendant,
 KIM WHATLEY,
 having been previously convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess a firearm, specifically a Ruger 9 mm semi-automatic pistol, Model P95DC, serial number 311-77525, in and affecting interstate and foreign commerce; in violation of Title 18, United States Code, Section 922(g)(1).

COUNT ELEVEN: (18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm)

On or about June 9, 2011, in the Northern District of California, the defendant,
 ELLA MAE SIMPSON,
 having been previously convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess a firearm, specifically a Smith and Wesson .357 revolver, Model 686-3, serial number BJC251, in and affecting interstate and foreign commerce; in violation of Title 18, United States Code, Section 922(g)(1).

FIRST FORFEITURE ALLEGATION: (21 U.S.C. § 853(a)(1) and (a)(2) – Criminal Forfeiture)

1. The factual allegations contained in Counts One through Nine of this Indictment are re-alleged and fully incorporated here for the purpose of alleging forfeiture pursuant to the provisions of 21 U.S.C. §§ 853(a)(1) and (a)(2).

2. Upon a conviction of any of the offenses alleged in Counts One through Nine of this Indictment, the defendants,

KIM WHATLEY,
 LOBIS BURTON, and

ELLA MAE SIMPSON,

shall forfeit to the United States all right, title, and interest in property constituting and derived from any proceeds defendants obtained, directly or indirectly, as a result of said violations, and any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of the said violations, including but not limited to the following property:

- a. Approximately \$235,524 in United States currency seized from 366 O'Harron Drive, Hayward, California, on June 9, 2011.
- b. One Ruger 9 mm semi-automatic pistol, Model P95DC, serial number 311-77525, seized from 22818 Vermont Street, Apt. 39, Hayward, California, on June 9, 2011.
- c. One Smith and Wesson .357 revolver, Model 686-3, serial number BJC251, seized from 366 O'Harron Drive, Hayward, California, on June 9, 2011.

3. If, as a result of any act or omission of the defendants, any of said property

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

any and all interest defendants have in any other property (not to exceed the value of the above forfeitable property) shall be vested in the United States and forfeited to the United States.

All in violation of Title 21, United States Code, Section 853(a)(1), (a)(2), (p) and Rule 32.2 of the Federal Rules of Criminal Procedure.

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SECOND FORFEITURE ALLEGATION: (18 U.S.C. § 924 (d)(1)) – Forfeiture of Firearms)

1. The factual allegations contained in Count Ten and Eleven of this Indictment are realleged and incorporated as if fully set forth here.

2. Upon a conviction for the offenses alleged in Count Ten and Eleven above, the defendants,

KIM WHATLEY, and
ELLA MAE SIMPSON

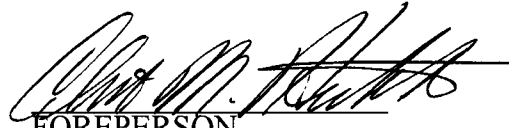
shall forfeit to the United States any firearm or ammunition involved in or used in any knowing violation of said offense, including but not limited to the following property:

- a. One Ruger 9 mm semi-automatic pistol, Model P95DC, serial number 311-77525, seized from 22818 Vermont Street, Apt. 39, Hayward, California, on June 9, 2011.
- b. One Smith and Wesson .357 revolver, Model 686-3, serial number BJC251, seized from 366 O' Harron Drive, Hayward, California, on June 9, 2011.

All in violation of Title 18, United States Code, Section 924(d)(1).

DATED: November 10, 2011

A TRUE BILL.

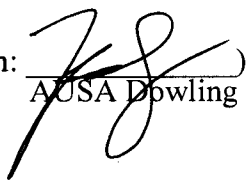


FOREPERSON

MELINDA HAAG
United States Attorney



MIRANDA KANE
Chief, Criminal Division

(Approved as to form: )
AUSA Dowling